

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:)	DOCKET NO. CWA-309-19-001
)	
Airtech International, Inc.)	
Huntington Beach, CA)	ADMINISTRATIVE ORDER ON
)	CONSENT
Respondent.)	
)	<i>Proceeding under Section 309(a) of the Clean</i>
)	<i>Water Act, 33 U.S.C. § 1319(a)</i>
)	
)	

ADMINISTRATIVE ORDER ON CONSENT

I. STATUTORY AUTHORITY

1. Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency (EPA) finds that any person is in violation of any condition or limitation which implements, *inter alia*, Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, the EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that the EPA determines to be reasonable.

2. The following Findings of Fact and Determinations of Law are made and this Administrative Compliance Order on Consent (AOC) is issued pursuant to the authority vested in the EPA by Section 309(a) of the CWA, 33 U.S.C. § 1319(a), as amended. This authority has been delegated to the Regional Administrator of the EPA, Region IX, and further delegated by the Regional Administrator to the Director of the Enforcement Division of the EPA, Region IX.

II. STATUTORY AND REGULATORY FRAMEWORK

3. CWA Section 301(a), 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States, except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

4. CWA Section 402, 33 U.S.C. § 1342, establishes the NPDES program and authorizes the EPA and authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States and CWA Section 402(p), 33 U.S.C. § 1342(p) requires that NPDES permits be issued for stormwater discharges "associated with industrial activity."

5. 40 C.F.R. § 122.26(b)(14)(ii) defines stormwater discharges associated with industrial activity to include plastic product manufacturing classified under SIC Major Group 28.

6. Pursuant to CWA § 402(p)(4), dischargers of stormwater associated with industrial activity are required to seek coverage under a promulgated general permit or seek individual permit coverage.

7. The State of California has an EPA-authorized NPDES program and issues permits, including industrial stormwater permits, through its State Water Resources Control Board (SWRCB) and nine Regional Water Quality Control Boards. On April 17, 1997, the State Water Board adopted General Permit No. CAS000001 for *Discharges of Stormwater Associated with Industrial Activities Excluding Construction Activities*, Water Quality Order No. 97-03-DWQ, which was in effect through June 30, 2015 and subsequently revised by the State Water Board on April 1, 2014, Water Quality Order No. 2014-0057-DWQ, which became effective on July 1, 2015, hereinafter, “General Permit”.

III. FINDINGS OF FACT AND DETERMINATIONS OF LAW

8. Respondent is a corporation formed under the laws of California and is a “person” within the meaning of CWA § 502(5), 33 U.S.C. § 1362(5).

9. Respondent owns and operates the Airtech International, Inc. facility located at 5700 Skylab Road in Huntington Beach, California (Facility).

10. Respondent has been engaged in manufacturing of vacuum bagging and composite tooling materials at the Facility. Respondent uses plastic resin infusion technology to manufacture various products for the aerospace industry, as well as for wind energy, marine, automotive, printed circuit board, and solar energy companies. Respondent’s operations at the Facility fall within activities classified under SIC Code 2821: Plastics Materials, Synthetic Resins, and Nonvulcanizable Elastomers, and is therefore an “industrial activity” for purposes of CWA § 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(ii).

11. Stormwater runoff from the Facility discharges by way of an engineered conveyance into an onsite storm drain inlet connected to the City of Huntington Beach Municipal Separate Storm Sewer System (MS4). Such inlets and the City of Huntington Beach MS4 are “point sources” within the meaning of CWA § 502(14), 33 U.S.C. § 1362(14).

12. Stormwater runoff from the Facility is a “stormwater discharge associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(ii).

13. Stormwater discharges from the Facility include waste from industrial processes, including plastic resin pellets and scrap metal, and therefore contain “pollutants,” as defined by CWA § 502(6), 33 U.S.C. § 1362(6).

14. Discharges from the Facility enter the City of Huntington Beach MS4 and discharge into the Bolsa Chica Channel, which flows to Anaheim Bay, and then the Pacific Ocean. The Bolsa Chica Channel, Anaheim Bay, and the Pacific Ocean are “waters of the United States” within the meaning of CWA § 502(7), 33 U.S.C. § 1362(7) and implementing regulations.

15. Respondent's discharge of pollutants in stormwater into waters of the United States constitutes a "discharge of pollutants" within the meaning of CWA § 502(12), 33 U.S.C. § 1362(12).

16. On September 7, 2016, Respondent certified and submitted via State Water Board's Storm Water Multiple Application and Report Tracking System (SMARTS) Permit Registration Documents (PRDs) for No Exposure Certification (NEC) coverage, and received coverage on September 8, 2016. The State Board assigned Respondent WDID # 8 30NEC002479.

17. Under Section XVII of the General Permit, dischargers are conditionally excluded from complying with the Storm Water Pollution Prevention Plan (SWPPP) and monitoring requirements of the General Permit if all the following conditions are met:

- a. There is no exposure of Industrial Materials and Activities to rain, snow, snowmelt, and/or runoff;
- b. All unauthorized non-stormwater discharges (NSWDs) have been eliminated and all authorized NSWDs meet the conditions of Section IV of the General Permit;
- c. The Discharger has certified and submitted via SMARTS PRDs for NEC coverage in accordance with the requirements of the General Permit; and
- d. The Discharger has satisfied all other requirements of Section XVII of the General Permit.

18. On March 14, 2018, representatives of the EPA performed an inspection of the Facility to evaluate the Respondent's compliance with the requirements of Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the General Permit. The EPA's inspection report was provided to Respondent on May 10, 2018 and is attached hereto as Exhibit 1.

19. As described in more detail in Exhibit 1, the EPA inspectors observed the following:

- a. industrial materials stored in an outside area and exposed to stormwater, including a forklift battery, scrap metal, and a waste bin without a proper lid;
- b. open waste containers that were overfilled with cardboard, foam debris and waste material stored outdoors near the Facility's shipping and receiving area;
- c. plastic resin pellets scattered on the loading dock floor and around the outer landscaped perimeter;
- d. industrial materials (e.g. plastic resin pellets) were observed in the engineered stormwater perimeter conveyance that flows toward one of the onsite stormwater drains at the Facility; and
- e. plastic resin pellets at the opening of the onsite storm drain without the permit-required capture Best Management Practices necessary to prevent plastic pellets from discharging with industrial stormwater. See Section XVIII of the General Permit.

20. Between September 2013 and September 2018, the National Oceanic and Atmospheric Administration reports that at least 0.5 inches of rain fell on at least 21 days at the Santa Ana John Wayne Airport, NOAA Weather Station. Therefore, during that time period, on at least 21 days, stormwater associated with industrial activity discharged from the Facility by way of an engineered conveyance into an onsite storm drain inlet connected to the City of Huntington Beach MS4 which ultimately discharges to Bolsa Chica Channel, Anaheim Bay, and then to the Pacific Ocean.

21. By discharging stormwater associated with industrial activity without NPDES Permit authorization, Respondent has violated and continues to violate CWA § 301(a), 33 U.S.C. § 1311(a).

IV. ORDER FOR COMPLIANCE ON CONSENT

22. Based on the foregoing Findings of Fact and Determinations of Law and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), IT IS HEREBY ORDERED and AGREED TO:

23. Work: Respondent shall perform the following tasks described in this Section no later than ninety (90) calendar days after the Effective Date of this AOC. All work described in Section IV shall be done by and under the supervision of persons with sufficient education, experience, and expertise.

a. Register for coverage under the General Permit by certifying and submitting the required Permit Registration Documents via SMARTS, which shall consist of: (1) a completed Notice of Intent and signed certification statement; (2) a copy of a current Site Map from the SWPPP in Section X.E. of the General Permit; (3) a SWPPP specific to the Facility's operations (see Section X of the General Permit); and (4) pay the appropriate Annual Fee in accordance with California Code of Regulations, Title 23, section 2200 et seq.

b. Develop a SWPPP that incorporates the special requirements for facilities that handle Plastic Materials, in accordance with Section XVIII.A.1 of the General Permit.

c. Perform a detailed clean-up of all plastic resin pellets found on and around the outer perimeter (landscaped area) of the Facility and submit before and after photos to EPA;

d. Identify an individual(s) responsible for stormwater management at the Facility. The individual(s) should decide whether the Respondent needs to hire a stormwater management consultant to assist in meeting the requirements of the General Permit; and

e. Complete training for all of the Facility's employees on proper material handling of plastic resin pellets and proper waste disposal and submit documentation to the EPA showing who was trained and the materials used for training.

V. FINAL REPORT AND TERMINATION OF THE AOC

24. Within thirty (30) calendar days after Respondent has fully completed and implemented the actions required by Section IV (Agreement on Consent) of this AOC, Respondent shall submit for the EPA's review and approval a final report (Final Report) that includes a description

and timeline of all of actions which have been taken toward achieving compliance with this AOC and the CWA.

25. If the EPA determines, after review of the Final Report, that all the requirements of this AOC have been completed and implemented in accordance with this AOC, the EPA will provide notice to Respondent and this AOC shall be deemed terminated.

26. If the EPA determines that any requirement has not been completed and implemented in accordance with this AOC, the EPA will notify Respondent, provide a list of deficiencies, and require Respondent to modify its actions as appropriate to correct such deficiencies. If so required, Respondent shall implement the modified requirement(s) and submit a modified Final Report.

VI. SUBMISSIONS AND RECORD RETENTION

27. Respondent shall submit all written communications, including progress reports, electronically. Respondent shall submit all required reports and plans to the EPA in an electronic format that allows them to be searchable by key word. Respondent shall send all submittals to the following e-mail address. Submissions will be deemed made on the date they are sent electronically.

Lawrence Torres
Clean Water Enforcement Section (ENF-3-2)
United States Environmental Protection Agency, Region IX
torres.lawrence@epa.gov

28. All reports, notifications, documentation, and submittals required by this AOC shall be signed by a duly authorized representative of Respondent as specified by 40 C.F.R. § 122.22 and shall include the following statement:

“I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

29. Respondent shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to the performance of the tasks in this AOC, until five (5) years after termination of this AOC. Respondent shall also instruct its agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in this AOC.

VII. MODIFICATION

30. Any request for modification by Respondent shall include the reason(s) for the request and a timeline for completion. Modification of this AOC shall be in writing and shall take effect only upon approval by the EPA. Failure by Respondent to implement any modified requirement(s) shall be a violation of this AOC.

VIII. GENERAL PROVISIONS

31. This AOC is binding on Respondent and its officials, officers, directors, partners, agents, employees, attorneys, successors and assigns, and on all persons, independent contractors, consultants and contractors acting in concert with Respondent.

32. Respondent shall provide a copy of this AOC to any successor in interest to its control, operation, or any other interest in any portion of its Facility at least thirty (30) calendar days prior to the transfer, and shall simultaneously notify the EPA in writing, via e-mail, that such notice has been given. Within fourteen (14) calendar days after the effective date of this AOC or the date of contracting, whichever is later, Respondent shall provide a copy of this AOC to all contractors and/or consultants to perform any of the work described in Section IV. Respondent shall condition the transfer of control, operation or any other interest in any portion of its Facility and any contract related to the performance of the work described in Section IV upon successful execution of this AOC.

33. This AOC is not and shall not be construed to be a permit under the CWA, nor shall it in any way relieve or affect Respondent's obligations under the CWA, or any other applicable federal or state laws, regulations, and/or permits. Compliance with this AOC shall be no defense to any actions commenced pursuant to such applicable laws, regulations, or permits, nor does it constitute a release.

34. This AOC shall in no way affect the rights of the EPA or the United States against any person not a party hereto.

35. This AOC shall in no way limit or affect the EPA's authority to obtain information, and to enter, inspect, sample or monitor compliance under any law, permit, court order or agreement.

36. The provisions of this AOC shall be severable. If any provision is declared by a court of competent jurisdiction to be unenforceable, then the remaining provisions shall remain in full force and effect.

37. Respondent consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Section 309(a) AOC. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

38. Failure to comply with the terms of this AOC may result in liability for statutory civil penalties under CWA Section 309(d), 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, a United States District Court may impose such penalties if the court determines that Respondent has violated the CWA as described above and failed to comply with

the terms of this AOC. In determining the amount of any penalty the court will consider the seriousness of the violations, the economic benefit (if any) resulting from the violations, any history that Respondent may have of such violations, any good faith efforts that Respondent has made to comply with legal requirements, the economic impact a penalty may have upon Respondent, and such other matters as justice may require.

39. Issuance of this AOC is not an election by the EPA to forego any remedies available to it under the law, including without limit any administrative, civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA. The EPA reserves all available legal and equitable rights and remedies to enforce any violations cited in this AOC, and the right to seek recovery of any costs and attorney fees incurred by the EPA in any actions against Respondent for non-compliance with this AOC.

40. In accordance with CWA § 309(a)(4), 33 U.S.C. § 1319(a)(4), the EPA will provide notice and a copy of this AOC to the State of California upon execution.


41. The undersigned signatory for Respondent certifies that he or she is authorized to execute this AOC and legally bind the Respondent.

IX. EFFECTIVE DATE

42. This AOC shall become effective on the date it is signed by the EPA.

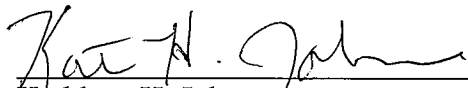
IT IS SO AGREED AND ORDERED:

FOR RESPONDENT

_____

10-3-18
Date

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 9

_____
Kathleen H. Johnson
Director, Enforcement Division

10-12-18
Date